



UNIVERSITY OF SOUTHERN MAINE
Office of Research Integrity & Outreach

Procedure #:	EC-001
Date Adopted:	3/13/12
Last Updated:	
Prepared By:	Ross Hickey, Export Control Officer
Reviewed By:	Human Resources; Provost; ORIO
Procedure Title:	H1-B Visa: Deemed Export SOP

1.0 Purpose and scope:

1.1 Pursuant to Export Control Regulations (ECR), the Department of Homeland Security (DHS) requires employers sponsoring an H-1B nonimmigrant worker (beneficiary) and certain other foreign workers to certify their compliance with ECR “deemed export” rules regarding the transfer or disclosure, including visual and oral, of technology or technical data to a foreign entity in the United States.

1.2 Scope: H1-B, H-1B1 Chile/Singapore, L-1, and O-1A nonimmigrant workers

2.0 General Description:

2.1 In accordance with Part 6 of United States Citizen and Immigration Services (USCIS) Form I-129, *Petition for Nonimmigrant Worker*, Sponsors must certify that they have reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and determined that:

- (1) a license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
- (2) a license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

2.2 The Sponsor is required to acknowledge that the USCIS has the authority to verify the information in the petition, including compliance with the deemed export requirement, through audits, on-site compliance reviews, and other ways of investigation.

2.3 Failure to comply with ECR can lead to civil penalties in an amount not to exceed the greater of \$250,000 or an amount that is twice that of the transaction; criminal penalties of up to \$1,000,000 per violation, prison terms up to 20 years, denial of export privileges, and debarment from U.S. government contracts.

3.0 Definitions:

3.1 Export Control Regulations: Consisting of Foreign Assets Controls (FAC), International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR), these are federal laws that prohibit the unlicensed transfer to foreign nationals of U.S. goods, services and technologies that are subject to trade restrictions, or have proprietary, military, or economic applications.

3.2 Foreign National: Any individual who is not a U.S. citizen or lawful permanent resident of the U.S. (green card holder), any foreign corporation or other entity not incorporated or organized to do business in the U.S., or any foreign government.

3.3 Export Control Officer: Officer at USM responsible for Review of Worksheet and Certification for compliance with ECRs.

3.4 Sponsors: Direct supervisor/project principal investigator(s) and/or sponsoring department who accepts overall responsibility for sponsoring an H-1B nonimmigrant worker (beneficiary) and certain other foreign workers to certify their compliance with ECR “deemed export” rules.

4.0 Responsibility:

4.1 Execution of SOP: Sponsor

4.2 Review of Worksheet and Certification for compliance: Export Control Officer and Human Resources

4.3 Document Retention: Sponsor, Office of Research Integrity and Outreach, Human Resources

5.0 Applicable Documents:

5.1 United States Citizen and Immigration Services (USCIS) Form I-129, *Petition for Nonimmigrant Worker*

5.2 Export Administration Regulations (EAR), 15 CFR 730-774

5.3 International Traffic in Arms Regulations (ITAR), 22 CFR 120-130

5.4 USM Export Control Regulations Policy

6.0 Procedure:

6.1 The Sponsor is required to familiarize him/herself with Export Control Regulations, ECR exemptions, and the items which are subject to ECR as outlined in the EAR [Commerce Control List](#) (CCL) and ITAR [United States Munitions List](#) (USML). The Sponsor may visit the [ORIO ECR website](#) to access the [CITI Online Export Control Training Module](#) and the [ECR Decision Tree](#) developed by the University of Maine's Office of Research and Sponsored Programs in order to accomplish this.

6.2 Sponsors are required to complete the Deemed Export Worksheet and Deemed Export Compliance Certification and obtain appropriate signatures. The worksheet should provide as much detail as possible regarding the beneficiary's position duties, and the technology and technical data (if any) to which s/he will have access, including names of any software the foreign national will use in the performance of her/his job duties, and their corresponding Export Control Number (ECN) from the CCL or USML.

6.3 Sponsors must mail the original copy of the signed Worksheet and Certification, along with a copy of the job description, beneficiary's curriculum vitae, and copies of pages from beneficiary's passport(s) as listed in the H1-B Deemed Export Worksheet to the Export Control Officer for review and signature at:

Office of Research Integrity and Outreach
126 Bedford Street
University of Southern Maine, Portland, ME

Electronic documents must also be sent as attachments via email to:
usmorio@maine.edu.

6.4 Once the Export Control Officer has reviewed and signed the completed Deemed Export Worksheet and Deemed Export Compliance Certification, the Sponsor is required to submit to Human Resources, along with the visa application, the completed and signed Deemed Export Worksheet with required attachments, and a signed Deemed Export Compliance Certification. **No visa petition will be filed until/unless these documents have been received by Human Resources, and a review and determination has been made by the Export Control Officer as to whether an export license is required.**

6.5 When a deemed export control license is required it is the responsibility of the sponsor to prevent the beneficiary access to the controlled technology or technical data until and unless USM receives the required license or other authorization to release such data.

6.6 The Sponsor must notify Human Resources and the Export Control Officer of any material changes to the H1-B employee's job duties, which would require filing an amended petition. This includes, but is not limited to: work location, types of technology used in performance of their job duties, and foreign travel.